APPELLATE CIVIL.

Before Mr. Justice Prinsep and Mr. Justice Ghose.

BIR CHUNDER MANIKYA (PLAINTIFF) *v.* RAJ MOHUN GOSWAMI AND OTHERS (DEFENDANTS).*

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Limitation Act, 1877, *Art.* 130—*Suit for assessment of rent on lakheraj land after decree for resumption—Effect of decree as creating or not relationship of landlord and tenant.*

The plaintiff brought a suit in 1861 against *C* for resumption of, and for declaration of his right to assess rent upon, *C's* lands within his zemindari which *C* held as *lakheraj*. That suit was presumably instituted under Regulation II of 1819, s. 30, which related only to resumption of *lakheraj* lands existing prior to 1790, but there was nothing to show conclusively under what law it was instituted, or whether the *lakheraj* grant was one subsequent or anterior to 1790. In that suit an *ex parte* decree was passed in 1863 that "the suit be decreed, and the land in dispute be declared to be *shukur*," *i.e.*, liable to assessment. In a suit brought in 1886 against the representatives of *C*, after serving a notice upon them to pay rent for the land at a certain rate, to assess the land at the rate mentioned in the notice, and for the recovery of rent at that rate: *Held* that the decree of 1863 had not the effect of creating the relationship of landlord and tenant between the parties, and therefore the suit, not having been brought within 12 years from the date of that decree, was barred by art. 130 of the Limitation Act XV of 1877.

THIS was a suit for assessment of rent on certain lands which the predecessor of the defendants had held as *lakheraj* lands, but which had been declared liable to assessment by an *ex parte* decree, dated the 14th January, 1863, which, as the plaintiff claimed, had the effect of establishing the relationship of landlord and tenant between himself and the defendants.

The defence (so far as it is material to this report) was that the decree passed in 1863 had not the effect ascribed to it by the plaintiff, and that the suit was consequently barred by lapse of time. Both the lower Courts decided in favor of the defendants, and the plaintiff appealed to the High Court.

Mr. *P. O'Kinealy* and Baboo *Srinath Banerjee* for the appellant.

* Appeal from Appellate Decree No. 2231 of 1887, against the decree of Baboo Nil Madhub Bundopadhya, Subordinate Judge of Tipperah, dated the 2nd of July 1887, affirming the decree of Baboo Chunder Prosunno Dutt, Munsiff of Commilla, dated the 14th of March 1887.

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Baboo *Akhoy Coomar Banerjee*, and Baboo *Gobind Chunder Doss* for the respondents.

The following cases were cited: *Sonatun Ghose* v. *Abdool Farrar* (1), *Madhusudan Sagory* v. *Nipal Khan* (2), *Saudamini Debi* v. *Sarup Chandra Roy* (3), *Protap Chunder Chowdhry* v. *Shukhee Soondaree Dassee* (4), and *Nilkomul Chuckerbutty* v. *Bir Chunder Manikya*, Special Appeal No. 1605 of 1885 decided on the 13th May, 1886 (5).

(1) B. L. R., Sup. Vol., 109; 2 W. R., 91.
(2) 8 B. L. R., Ap, 87 (note); 15 W. R., 449.
(3) 8 B. L. R., Ap., 82; 17 W. R., 363.
(4) 2 C. L. R., 569.
(5) *Before Mr. Justice Mitter and Mr. Justice Grant.*

NIL KOMUL CHUCKERBUTTY AND OTHERS (DEFENDANTS) *v.* BIR CHUNDER MANIKYA (PLAINTIFF).*

Limitation Act, 1877, Art. 130—Suit for assessment of rent on lakheraj land after decree for resumption—Effect of decree as creating or not relationship of landlord and tenant.

The plaintiff in 1862 obtained a decree for resumption of land held under an invalid *lakheraj* title created before 1790, the decree declaring the land liable to assessment. In a suit brought more than twelve years after the decree against the representatives of the defendant in the suit of 1862 to assess the land: *Held*, that the decree of 1862 did not create the relationship of landlord and tenant between the parties, and that the suit was, therefore, barred under Art. 130 of the Limitation Act XV of 1877.

THE facts of this case are sufficiently stated in the judgment.

Baboo *Troyluckonath Mitter* and Baboo *Golap Chunder Sircar* for the appellants.

Baboo *Rutnessur Sen* (for Baboo *Kali Mohun Das*), and Baboo *Durga Mohun Das* for the respondent.

The judgment of the Court (MITTER and GRANT, JJ.) was as follows:—

This is a suit brought by the plaintiff to assess certain lands, which were declared by a decree of 1862 to be liable to assessment as invalid *lakheraj*. One of the objections taken by the defendants in this Court, as well as in the lower Courts, is that the suit is barred by limitation. Another point urged here is that one of the defendants in that suit, *viz.*, Prosunno Coomar Chuckerbutty, was a minor at the time when the decree was passed, and that he was not represented by his guardian. As we think that upon the first point taken, namely, the point of limitation, the defendants appellants

*Appeal from Appellate Decree, No. 1605 of 1885, against the decree of Baboo Kali Dass Dutt, Subordinate Judge of Tipperah, dated the 22nd of April 1885, reversing the decree of Baboo Gour Chunder Ray, Munsiff of Kushtia, dated the 28th of April 1884.

The facts and arguments are sufficiently stated in the judgment of the Court (PRINSEP and GHOSE, JJ.) which was as follows :—

The question involved in this appeal is one of limitation under art. 130 of the second schedule of Act XV of 1877; and it arises in this way :—

The plaintiff, who is the zemindar of Chuckla Rashinabad, instituted a suit on the 28th of December 1861 against one

are entitled to succeed, it is unnecessary to express any opinion upon the other point.

Now, to a suit of this kind, art. 130 of the second schedule of the Limitation Act applies. That article says that in a suit for the resumption or assessment of rent-free land the period of limitation is twelve years from the date when the right to resume or assess the land first accrues. The right to assess accrued in this case in the year 1862, when the resumption decree was passed, and the present suit having been brought more than twelve years from that date is barred. But it has been contended on behalf of the respondent that that article does not apply, because in this case the decree in 1862 established a relationship of landlord and tenant between the plaintiff and the predecessor in title of the defendants. If that were so no doubt it would be an answer to the contention of the appellants that the suit is barred by limitation under art. 130. Now what has been settled by authorities on this point is this, that the mere mention of s. 30, Regulation II of 1819, is not conclusive, although that section only refers to the resumption of invalid *lakheraj* lands created before the 1st December 1790, that is, although on the face of the decree it appeared that that section was mentioned, yet the suit was really a suit for assessment of rent upon land alienated from the *mal* estate after the 1st December 1790, and that the decree established a relationship of landlord and tenant between the person in whose favor the decree was passed and the person against whom it was passed. If that is not established, then it would be taken to be a decree for resumption of invalid *lakheraj* lands under s. 6, Regulation XIX of 1793. In this case the decree has been placed before us, and we cannot say that it is shown thereby that, although it purports to have been based upon s. 30, Regulation II of 1819, yet it was really a decree for assessment of *mal* land. That being so, we must take it that the decree of 1862 was a decree for resumption of land held under an invalid *lakheraj* title created before the 1st December 1790. For assessment of such lands, the procedure laid down in s. 9, Regulation XIX of 1793, has first to be adopted by the zemindar. The last part of that section says: "If the proprietor shall agree to pay the revenue required of him, he and his heirs and successors shall hold the lands as a dependent taluk, subject to the payment of such fixed revenue for ever." But that section does not provide for a case where the proprietor, that is to say, the *lakheraj*-

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Choituno Mohun Adhicary in the Collector's Court for the purpose of resuming, and for having his right declared to assess rent upon, certain lands within the ambit of his zemindari which he, the defendant, held as *lakheraj*. It does not appear from the decree pronounced in that suit, and which we may here mention is the only proceeding before us in connection with it, whether it was a suit under the provisions of s. 30, Regulation II of 1819, or s. 28, Act X of 1859, or under any other law; but we have it that subsequently to the passing of Bengal Act VII of 1862, which provided for the transfer of suits instituted under s. 30, Regulation II of 1819, from the Collector's Court to the Civil Court, that suit was transferred from the Collector's to the Civil Court; and there can be little doubt that, as this transfer was made immediately after the passing of that Act, and no special reason is assigned for its transfer, it was made in consequence, and that, therefore, the suit had been brought under s. 30, Regulation II of 1819. And we may here observe that if it had been a suit under Act X of 1859, there

dar, refuses to pay the revenue required of him. It is clear that in a case of that description the zemindar must proceed by a regular suit to assess the land according to the provisions of s. 8, Regulation XIX of 1793. To a suit of that description, art. 130 of the Limitation Act would apply. In this case there is nothing to show that the plaintiff first proceeded under s. 9, Regulation XIX of 1793, and that then finding that the *lakheraidar* did not agree to pay the revenue assessed upon the land, he was compelled to bring this regular suit. But it is clear from the proceedings in the lower Court that the defendants would not consent to pay any revenue at all. Their contention was that the suit is barred. It is, therefore, quite unnecessary to require the plaintiff to proceed first according to the direction contained in s. 9, Regulation XIX of 1793. We may take it that the *lakheraidars*, the defendants, would refuse to pay the revenue that might be assessed on their lands under the provisions of Regulation XIX of 1793. That being so, the simple question is whether the present suit is barred under art. 130 of the Limitation Act. I have already pointed out that, unless the decree of 1862 established a relationship of landlord and tenant, the present claim would be barred. It has been already shown that that decree does not go to establish that point in favor of the plaintiff. The suit is, therefore, barred by the limitation prescribed by art. 130.

We accordingly reverse the decree of the lower Appellate Court and dismiss the suit with costs.

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was nothing to prevent the Collector from proceeding with it. In the Full Bench case of *Sonatun Ghose* v. *Abdool Farrar* (1), the majority of the Judges who constituted that Bench held that s. 30, Regulation II of 1819, related only to resumption of *lakheraj* existing prior to 1790. And if this suit be regarded as one brought under that law, it would seem that it was barred under the law of limitation then in force (XIV of 1859, s. 14). But however that may be, an *ex parte* decree was passed in January 1863 in these words: "The suit be decreed, and the land in dispute be declared to be *shukur*." These words, taken with the recitals of the claim given in the decree, mean, as we take it, that the prayer for resumption of the *lakheraj* be allowed, and the lands be declared liable to pay revenue or rent, as the case might be, with reference to the grant set up being either anterior or posterior to December 1790.

Nothing was done in furtherance of that decree, until the year 1886, when a notice was served by the zemindar upon the defendants, who are the representatives of Choituno Mohun Adhicary, calling upon them to agree to hold the lands at a certain jumma; and he subsequently brought the present suit on the 12th of July 1886 for the purpose of assessing the lands at the rate mentioned in the notice, and for recovery of rent at that rate.

This suit has been dismissed by both the lower Courts as barred by limitation.

The main contention that was raised before us by Mr. O'Kinealy, the learned Counsel for the appellant, was that, although more than 12 years have elapsed from the date of the decree of 1863, still no limitation would apply, because the effect of the decree was to re-annex the land that had been improperly alienated after 1790 to the *mal* estate of the zemindar, and to create between the parties the relationship of landlord and tenant. Mr. O'Kinealy further contended that the land having been already declared to be *mal*, art. 130 of the Limitation Act had no application. And he relied upon the rulings of this Court in *Madhusudan Sagory* v. *Nipal*

(1) B. L. R., Sup. Vol., 109; 2 W. R., 91.

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Khan (1), *Saudamini Debi* v *Sarup Chandra Roy* (2), and *Protap Chunder Chowdhry* v. *Shukhee Soondaree Dassee* (3).

The validity of the contention raised before us depends entirely upon what may be the true interpretation and effect of the resumption decree passed in January 1863. That decree, as already mentioned, does not show under what law it was passed, nor is there anything stated in it as to whether the grant set up by the *lakherajdars* was a grant subsequent or anterior to December 1790. Unless this be shown, we cannot say that the effect of the decree was to establish, as contended for the appellant, the relationship of landlord and tenant between the parties. It has been held in certain cases by this Court that a decree for resumption of a *lakheraj* grant before December 1790 does not by itself create such a relation; that it is after the decree has been followed up by a proceeding assessing the revenue payable by the *lakherajdar*, and when the latter agrees to pay the revenue assessed, that such a relationship is created; while in the case of a grant subsequent to the year 1790, the decree declaring the zemindar's right to assess rent does establish such a relation. See *Madhub Chandra Bhadory* v. *Mahima Chandra Mazumdar* (4), and *Shamasunderi Debi* v. *Sital Khan* (5).

Taking the law as thus laid down we think that, in the absence of anything being shown by the plaintiff as to the law under which the above decree was passed, and whether the alienation was anterior or subsequent to the year 1790, we cannot say for him, upon the bare words of the decree, that it established the relationship of landlord and tenant; while, on the other hand, the fact of the suit being transferred after the passing of Bengal Act VII of 1862 from the Collector's to the Civil Court indicates to our mind that it was a suit under s. 30, Regulation II of 1819, which related to the resumption of grants made before the year 1790. If the alienation was made before that year, there can be no doubt that the decree was in respect of

(1) 8 B. L. R., Ap., 87 (note); 15 W. R., 440.
(2) 8 B. L. R., Ap., 82; 17 W. R., 363.
(3) 2 C. L. R., 569.
(4) 8 B. L. R., Ap., 83 (note); 12 W. R., 442.
(5) 8 B. L. R., Ap., 85 (note); 15 W. R., 474.

lands falling within s. 6, Regulation XIX of 1793, and it follows that the zemindar was bound to have adopted the procedure laid down by ss. 8 and 9, Regulation XIX of 1793, for the assessment of revenue upon those lands. And if this had been done, the relationship of landlord and tenant would have been established between the parties. But so far as the words of the decree of 1863 are concerned, they merely amount to this, that the *lakheraj* is not a valid one, and that the lands are liable to pay revenue or rent, as the case might be. It does not declare that the lands belong to the *mal* estate of the zemindar.

If this decree did not establish the relationship of landlord and tenant, and if it did not declare that the lands were the *mal* land of the zemindar, it seems to us to be clear that the plaintiff was bound to have brought his suit within twelve years from the date thereof for the assessment of the lands.

As to two of the cases relied upon by Mr. O'Kinealy, *viz. Madhusudan Sagory* v. *Nipal Khan* (1) and *Saudámini Debi* v. *Sarup Chandra Roy* (2), we may observe that the question of limitation was not raised in either of them; and there is nothing in those decisions, as we understand them, which militates against the view we have expressed. It was no doubt laid down in the first of these two cases that, in regard to decrees passed before the Full Bench decision in the case of *Sonatun Ghose* v. *Abdool Farrar* (3), it could not be said that merely because the procedure laid down in s. 30, Regulation II of 1819, was followed, it must be inferred that the grant was anterior to December 1790. But it is to be observed that it was found in the judgment delivered in the resumption case, which was before the Judges in the above case, that the defendant had failed to prove that the *lakheraj* existed prior to 1790; while so far as the resumption decree with which we are concerned, there was no such finding: and, in the second place, as already remarked, there are other facts before us which lead us to infer that the grant which was the subject-matter of the decree of 1863 was one anterior to 1790.

(1) 8 B. L. R., Ap., 87 (note); 15 W. R., 440.
(2) 8 B. L. R., Ap., 82; 17 W. R., 363.
(3) B. L. R., Sup. Vol., 109; 2 W. R., 91.

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As regards the other case relied upon by Mr. O'Kinealy, *viz.*, *Protap Chunder Chowdhry* v. *Shukhee Soondaree Dassee* (1), it is sufficient to state that the judgment proceeds mainly upon the construction which the learned Judges put upon the resumption decree that was before them. That decree was construed to have the effect of declaring "that the land in the possession of the defendant had been part of the permanently-settled estate, and had been separated by an invalid grant, and thereon to resume the same and re-annex the land to the zemindar's estate." We have not before us the terms of the decree in that case, nor do we know what were the facts from which this construction was arrived at. The terms of the decree in the suit of 1886, now before us, do not however enable us to come to the same conclusion.

Our attention has been called by the learned vakeel for the respondent to an unreported decision by another Divisional Bench of this Court (Mitter and Grant, JJ.) in second appeal No. 1605 of 1885, decided on the 13th May 1886, which altogether supports the view adopted by the lower Appellate Court, holding that the plaintiff's claim was barred under art. 130 of the Limitation Act. The facts of that case were very similar to this, and we may say that we quite concur in that ruling.

The appeal will accordingly be dismissed with costs.

Appeals Nos. 2219, 2230, 2233 will be governed by the decision in No. 2231. And so far as the latter of these cases is concerned, it being found that the predecessor of the present defendant was no party to the resumption decree, there can be no question whatever that the plaintiff's suit is barred by limitation. These appeals are accordingly dismissed with costs.

J. V. W. *Appeal dismissed.*

(1) 2 C. L. R., 569.

Before Mr. Justice Pigot and Mr. Justice Beverley.

GOKUL KRISTO CHUNDER (JUDGMENT-DEBTOR) *v.* AUKHIL CHUNDER CHATTERJEE (DECREE-HOLDER).* 1889 *February 7.*

IN THE MATTER OF THE PETITION OF ISHAN CHUNDER DAS (DECREE-HOLDER).

RASHARAJ BOSE AND OTHERS (JUDGMENT-DEBTORS), *v.* GOBINDA RANI CHOWDHRANI (DECREE-HOLDER).†

MOOLA KUMARI BIBEE (DECREE-HOLDER) *v.* MOOL CHAND DHAMANT AND ANOTHER (JUDGMENT-DEBTORS), AND

BISSUN CHAND DOODHURIA (DECREE-HOLDER) *v.* MOOL CHAND DHAMANT AND ANOTHER (JUDGMENT-DEBTORS.)‡

Execution of decree—Transfer of decree for execution—Jurisdiction—Civil Procedure Code (Act XIV of 1882) ss. 6 and 223.

Having regard to the provisions of s. 6 of the Code of Civil Procedure, a Civil Court has no jurisdiction to execute a decree sent to it for that purpose under s. 223 of the Code, when the decree has been passed in a suit the value or subject-matter of which is in excess of the pecuniary limits of its ordinary jurisdiction. *Narasayya* v. *Venkata Krishnayya* (1) dissented from

Sidheshwar Pandit v. *Harihar Pandit* (2), *In re Balaji Ranchoddas* (3), and *Mungul Pershad Dichit* v. *Grija Kant Lahiri* (4), referred to.

Appeal No. 284 *of* 1888.

THIS was an appeal from an order of the 16th July 1888, of the District Judge of Burdwan, affirming the order of the Munsiff of Cutwa, dated the 12th May 1888.

A decree of the High Court in its Ordinary Original Civil Jurisdiction had been sent to the Munsiff of Cutwa for execution. The application of the judgment-creditor for execution was objected to by the judgment-debtor on the ground that the Munsiff had no jurisdiction to execute the decree, inasmuch as it

* Appeal from Order No. 284 of 1888, against the order of F. B. Taylor, Esq., Judge of Burdwan, dated the 16th of July 1888, affirming the order of Baboo Raj Narain Chuckerbati, Munsiff of Kutwa, dated the 12th of May 1888.

† Civil Rule No. 1032 of 1888, against the order passed by Baboo Upendra Nath Bose, Munsiff of Munshigunge, dated the 28th of April 1888.

‡ Civil reference No. 8A. of 1888, made by Baboo Nobin Chunder Ganguli, Judge of the Small Cause Court, Berhampore, dated the 10th of April 1888.

(1) I. L. R., 7 Mad., 397.
(2) I. L. R., 12 Bom., 155.
(3) I. L. R., 5 Bom., 680.
(4) I. L. R., 8 Calc., 51.

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had been passed in a suit, the value or amount of the subject-matter of which was in excess of the pecuniary limits of his ordinary jurisdiction. The Munsiff overruled the objection and ordered execution. On appeal, the District Judge upheld the order of the Munsiff on the authority of the case of *Narasayya* v. *Venkata Krishnayya* (1).

The judgment-debtor appealed to the High Court.

Civil Rule No. 1032 *of* 1888.

This was a rule on the judgment-debtors and the decree-holder, Govinda Rani Chowdhrani, to show cause why an order of the Second Munsiff of Munshigunge, dated the 28th April 1888, allowing Govind Rani to participate in the assets to be realized in execution of the petitioner's decree, should not be set aside.

The facts of the case in which this rule was issued were as follows:—

A decree for Rs. 853 was made in favor of the petitioner, Ishan Chandra Das, by the Munsiff of Patuakali, on 17th February 1879. This decree was transferred to the Second Munsiff of Munshigunge for execution, and on the 27th October 1887, certain of the judgment-debtor's property within his jurisdiction was attached, and on the 12th March sold for Rs. 300. On the 7th March 1888, five days before the sale, Govinda Rani Chowdhrani who, with others, on the 6th April 1877, had obtained a mortgage decree against the same judgment-debtor for upwards of Rs. 11,000 in the Court of the First Subordinate Judge of Dacca, applied to that Court to send the decree to the Munsiff of Munshigunge for execution. The application was granted, and on the 11th March 1888, Govinda Rani applied to the Munsiff for execution, and for a rateable distribution of sale proceeds in execution of the petitioner's decree under s. 295 of the Civil Procedure Code. On the 14th April the petitioner objected to this application; but the Munsiff overruled the objection, and by his order, dated the 28th April 1888, directed a rateable distribution of the sale proceeds. Against this order, on the 2nd August 1888, the petitioner moved the High Court on the ground, *inter alia*, that Govinda Rani's decree, being for a sum of over Rs. 11,000, must presumably have been made in a suit which the

(1) I. L. R. 7 Mad., 397.

Munsiff would have had no jurisdiction to try, and that, therefore, the Munsiff was not competent to execute the decree or to make any order respecting it under s. 295 of the Code, and a rule was issued in the above terms.

Civil Reference No. 8*A of* 1888.

This was a reference to the High Court from the Small Cause Court at Berhampore.

The facts of the case in which the reference was made were these: The Judge of the Small Cause Court at Berhampore was also the Subordinate Judge of Moorshedabad. On the 4th January 1888, Moola Kumari Bibee obtained a decree against Mool Chand Dhamant and another in the Small Cause Court at Berhampore. In execution of her decree, she attached the moveable properties of the judgment-debtors on the 20th January 1889. The properties were sold on 9th March 1889; prior to the sale, on the 2nd March, Rai Bissun Chand Doodhuria Bahadoor, who had, on the 28th January 1889, obtained a decree for Rs. 3,209 against the same judgment-debtor in the Court of the Subordinate Judge of Moorshedabad, applied to that Court to send the decree to the Small Cause Court at Berhampore for execution. The application was granted; and on 7th March Rai Bissun Chand applied to the Judge of the Small Cause Court for execution, and for a rateable distribution of the sale proceeds under s. 295 of the Civil Procedure Code. Moola Bibee met the application with the objection, amongst others, that inasmuch as the Judge of the Small Cause Court had no jurisdiction to try the suit, he was not competent to execute the decree. The Judge made an order for rateable distribution contingent on the opinion of the High Court.

In Appeal No. 284 of 1888,—
Baboo *Karuna Sindhu Mukerjee* for the appellant.
Baboo *Benode Behari Mukerjee* for the respondent.
In Rule No. 1032 of 1888,—
Baboo *Hurri Mohun Chuckerbutty* for the petitioner.
Baboo *Lal Mohun Das* for the opposite parties.
In Reference No. 8A of 1888,—
Baboo *Srinath Das* for the decree-holders.
Baboo *Kali Kissen Sen* for the judgment-debtors.

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The following judgments were delivered by the High Court (PIGOT and BEVERLEY, JJ.)

BEVERLEY, J.—In these three cases the question raised is practically one and the same. It may be broadly stated thus: Has a Civil Court jurisdiction to execute a decree sent to it for that purpose under s. 223 of the Code when that decree has been passed in a suit the value or amount of the subject-matter of which was in excess of the pecuniary limits of its ordinary jurisdiction?

[The judgment here set out the facts in the three cases and then proceeded.]

In all three cases, therefore, the point is virtually the same: namely, whether under s. 223 of the Code a decree can be sent for execution to, and can be executed by, a Court which, as regards its pecuniary jurisdiction, was not competent to make the decree.

On the one side, it is contended that s. 223 contains no limitation as regards the pecuniary jurisdiction of the Court to which a decree may be sent for execution, similar to that contained in s. 25; that by s. 28 the Court to which a decree is sent for execution is expressly vested with the same powers in executing it as if the decree had been passed by itself; that if there is any force in the limitation sought to be imposed, the provisions of s. 295 regarding the rateable distribution of assets would, in many cases, be unfairly restricted in their operation. And we have been referred to the case of *Narasayya* v. *Venkata Krishnayya* (1) in which Turner, C.J., and Muttasami Ayyar, J., held that s. 223 gave an extraordinary jurisdiction to a Court to execute a decree in a suit beyond its pecuniary jurisdiction sent to it for execution.

On the other hand, it is said that the proceedings in execution are merely a continuation of the suit, and that a Court, which has no jurisdiction to try the suit, can have no jurisdiction to execute a decree made in that suit. And in support of this view, the case of *Shri Sidheshwar Pandit* v. *Shri Harihar Pandit* (2) decided by Sargent, C.J., and Nanabhai Haridas, J., has been cited before us.

(1) I. L. R., 7 Mad., 397. (2) I. L. R., 12 Bom., 155.

It appears, therefore, that the Madras and Bombay authorities are opposed to each other on this point. The point is one of some importance, but it would seem that no decision of this Court upon it is to be found in the reports.

The question turns to some extent upon the Civil Courts Acts, which prescribe the pecuniary jurisdiction of the various Civil Courts. And it may be pointed out here that, whereas the Madras and Bombay Civil Courts Acts (Act III of 1873, s. 12, and Act XIV of 1869, s. 24) speak of the jurisdiction of the Courts in "*suits and proceedings*" of a civil nature, the Bengal Civil Courts Act refers to "*suits*" only. The distinction is probably unimportant, and, in fact, it appears that, in the report of the Madras case referred to, the words "*suits and applications*" are quoted by some mistake as being the words used in the Madras Act instead of the words "*suits and proceedings.*"

The Madras decision proceeds upon the principle that s. 223 of the Code confers an extraordinary jurisdiction which is limited by no restriction such as is to be found in s. 25.

We are of opinion that we ought not to follow that decision.

It seems to us that the learned Judges who decided that case overlooked the provisions of s. 6 of the Code of Civil Procedure, which appears to contain words which, we think, were expressly intended to limit the jurisdiction which would otherwise be given by s. 223. We are also of opinion that there are other indications in the Code going to show that, as Sargent, C.J., said in the Bombay case, a Court which could not have entertained the suit is incompetent to deal with it in execution.

The last clause of s. 6 runs as follows: "Nothing in this Code shall operate to give any Court jurisdiction over suits of which the amount or value of the subject-matter exceeds the pecuniary limits (if any) of its ordinary jurisdiction."

It is contended that the word "*suits*" in this clause must be limited to proceedings in the cause up to the passing of the decree, and that it does not, therefore, operate to curtail the power of a Court to execute a decree. We see no sufficient reason for giving the word this restricted meaning. On the other hand, there would appear to be several weighty reasons for assigning it a

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wider signification so as to cover all proceedings in a suit, including the proceedings in execution.

By s. 9 the Code is divided into ten parts, the first of which treats of *suits in general*. It is important to observe that that part of the Code contains the rules relating to the execution of decrees (Chap. XIX). So far as it goes, this circumstance seems to show that the framers of the Code regarded the proceedings in execution as a part of the suit.

In s. 3, moreover, we find proceedings up to decree and proceedings after decree equally referred to as being proceedings in the suit.

Again, if the words "jurisdiction over suits" in s. 6 are to be limited to the institution and hearing of causes up to decree only, it is difficult to conceive any case to which the clause in question would apply. We have been unable to discover any provision in the Code which could, if uncontrolled by this clause, have operated to give a Court jurisdiction to try a suit in excess of the limits of its pecuniary jurisdiction. Chapter II contains the rules as to the Court in which a suit is to be brought: and it will be seen that in almost every section in that chapter the pecuniary jurisdiction of the Court is expressly or impliedly referred to. (See ss. 15, 16, 17, 19 and 25).

On the other hand, s. 223, if uncontrolled by s. 6, gives to a Court a very wide—in fact a practically unlimited—jurisdiction in many important matters in respect of suits, the amount or value of the subject-matter of which may exceed the pecuniary limits of its ordinary jurisdiction.

By s. 228, the Court executing a decree sent to it has the same powers in executing the decree as if it had been passed by itself, * * * * and its order in executing such decree is made subject to the same rules in respect of appeal as if the decree had been passed by itself.

Accordingly, if the decree of a District or Subordinate Judge can be sent to a Munsiff for execution, the Munsiff has jurisdiction to try all questions relating to the execution of the decree (*e.g.*, limitation, claims to attached property, complaints of resistance or obstruction, and generally all questions under s. 244), and the appeal from his orders would lie in every case to the District Judge,—no matter

what might be the value of the suit. As Westropp, C.J., remarked in *Balaji Ranchoddas* (1), questions arising in the execution of decrees are frequently quite as important as the questions in issue in suits and appeals, and there would seem to be no reason why the limitation of jurisdiction thought necessary in respect of hearing the original suit should not be also necessary in respect of trying questions relating to the execution of the decree.

There are other considerations which go to bear out the view that the jurisdiction conferred by s. 223 must be considered as qualified by the last clause of s. 6.

Section 223 itself contains a clause empowering the Courts of Small Causes at Calcutta, Madras, Bombay, or Rangoon, to execute decrees sent to them in certain cases, but such a decree must have been passed in a case cognizable in a Court of Small Causes, or, as Act VII of 1888 more clearly puts it, "in a suit of which the value, as set forth in the plaint, did not exceed two thousand rupees, and which, as regards its subject-matter, is not excepted by the law for the time being in force from the cognizance of either a Presidency or a Provincial Court of Small Causes." In other words, we have here a distinct recognition of the rule, which appears to be contained in s. 6, that no Court can execute a decree passed in a suit, the value of the subject-matter of which would have been in excess of its pecuniary jurisdiction.

Section 649 refers to a case in which a Court, which passed a decree, may have ceased "to exist or to have jurisdiction to execute it." The use of these words in the Code seems to imply that the jurisdiction of a Court in the execution of decrees is subject to limitation, and that it is not competent to every Court to execute the decree of another Court that may be sent to it for that purpose.

The last clause of s. 6 was first introduced into the Code of 1877. But the Code of 1859 everywhere assumes that the power to execute a decree is not a power possessed by all Courts indiscriminately, but is subject to restrictions of jurisdiction. That Code speaks of the Court "*whose duty it is to execute the decree*" (see ss. 206, 207, 285). That Court need not necessarily be the Court which passed the decree (s. 206), but it must be a

(1) I. L. R., 5 Bom., 680.

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Court having jurisdiction to execute it, and by s. 287 that Court must apparently be either the principal Civil Court of original jurisdiction in the district," or " any Court subordinate thereto to which it may entrust the execution of the decree."

In the case of *Mungul Pershad Dichit* v. *Grija Kant Lahiri* (1), their Lordships of the Privy Council said: "It appears to their Lordships that an application for the execution of a decree is an application in the suit in which the decree was obtained." This and similar remarks which are to be found elsewhere support the view that the proceedings in a "suit" do not necessarily terminate with the decree, but that the word "suit" may fairly be interpreted to include the proceedings taken to execute the decree. If this be so, it follows that s. 6 must operate to limit the jurisdiction conferred by s. 223. We are of opinion that it does so operate, and that these cases ought to be decided accordingly.

The rule will accordingly be made absolute with costs. The appeal from Order No. 284 will be allowed with costs, the order of the lower Courts being set aside. And the reference will be answered in the terms of this judgment.

PIGOT, J.—I am of the same opinion. In the judgment which has been just read, an argument adduced by the learned pleader, Babu Lal Mohan Das, has not been mentioned by us, and we think it is well to add these words of reference to it. That argument was used as an answer to the objections referred to in our judgment as to allowing Courts of inferior jurisdiction to deal with questions of great amount or great importance, and it was suggested that s. 239 meets that difficulty by providing for recourse to the Court making the decree in certain cases. That suggestion is, however, met by the observation that the power of having recourse to the Court granting the decree given by that section is limited to the judgment-debtor. We think that disposes of that argument.

Appeal allowed and Rule made absolute.

C. D. P.

(1) L. R., 8 Calc., 51; L. R., 8 I. A., 123.

Before Mr. Justice Prinsep and Mr. Justice Ghose.

DURGA CHARAN MOJUMDAR (DECREE-HOLDER) *v.* UMATARA GUPTA (JUDGMENT-DEBTOR).* 1889 *February* 21.

Execution of decree—Transfer of decree for execution—Civil Procedure Code, 1882, s. 223.

Section 223 of the Code of Civil Procedure, which declares that the Court which passes a decree may, on the application of the decree-holder, send it for execution to *another Court*, should be interpreted to mean another Court having jurisdiction and competent to execute that decree, having regard to the amount or value of the subject-matter of its ordinary jurisdiction.

Narasayya v. *Venkata Krishnayyar* (1), dissented from.

THE facts as stated by the lower Appellate Court were as follows:—

"Umatara Gupta obtained a decree for about Rs. 500, against one Rajoni Kanta Sen, in the Subordinate Judge's Court, at Commillah. About the same time Rajoni Kanta obtained a decree for about Rs. 800, against Umatara, in the Court of the First Munsiff of Muradnagor. Rajoni subsequently sold his decree to Durga Charan Mojumdar. When execution of the larger decree was taken out in the Munsiff's Court by the then decree-holder, Durga Charan Mojumdar, Umatara Gupta applied to have her own decree set off against that which was sought to be executed. Her application was rejected by the Munsiff on the ground of want of the necessary certificate under s. 224 of the Civil Procedure Code from the Court (that of the Subordinate Judge) which had passed the decree. On appeal to this Court the Munsiff's order was affirmed. Umatara Gupta then applied to the Subordinate Judge for the necessary certificate under s. 224, which she obtained and duly filed in the Munsiff's Court: this was on the 16th February 1888. The Munsiff deferred consideration of the petition until the 9th April, the date fixed for the sale of Umatara Gupta's attached property, and on that date he

* Appeal from Order No. 416 of 1888, against the order of D. Cameron, Esq., Judge of Tipperah, dated the 30th of June 1888, reversing the order of Baboo K. D. Chowdhry, Munsiff of Muradnagor, dated the 9th of April 1888.

(1) I. L. R., 7 Mad., 397.

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passed an order rejecting her application for set-off, on the ground that her judgment-debtor was Rajoni Kant Sen, and not Durga Charan Mojumdar, the transferee of the decree under execution."

The Judge reversed the decision of the Munsiff, and directed that "the set-off applied for be allowed."

From this order Durga Charan Mojumdar appealed to the High Court on the ground, among others, that the Subordinate Judge had no power to transfer the decree to the Munsiff for execution.

Baboo *Okhoy Coomar Banerjee* for the appellant.

Baboo *Rajendro Nath Bose* for the respondent.

The judgment of the Court (PRINSEP and GHOSE, JJ.) was as follows:—

The matter for our decision in this appeal is whether the Munsiff was competent to execute a decree transferred to him by the Subordinate Judge who passed it.

It appears that the appellant obtained a decree from the Munsiff which he put into execution. Another decree had been obtained against him, or rather against his assignor, in the Court of the Subordinate Judge, and the decree-holder thereupon obtained an order from the Subordinate Judge to transfer the decree by an order under s. 223 to the Court of the Munsiff, in order that it might be set off as a cross-decree. The sole question submitted for our decision is whether such an order can be passed by the Subordinate Judge so as to give the Munsiff jurisdiction. The terms of s. 223, standing by themselves, are sufficiently wide to permit this, but we think that they should be read with the other portions of the Code which restrict their application. Section 6 of the Code declares that "nothing in this Code affects the jurisdiction or procedure, or shall operate to give any Court jurisdiction over suits of which the amount or value of the subject-matter exceeds the pecuniary limits (if any) of its ordinary jurisdiction." Now all matters relating to execution of decrees are regarded as proceedings in a suit, and the chapter relating to matters in execution forms portion of Part I of the Code which is entitled "Of suits in general." We may also refer to the well-known case of *Mungul Pershad Dichit* v. *Grija*

Kant Lahiri (1) in which their Lordships of the Privy Council expressed themselves in a similar manner. Section 246 of the Code, Explanation I, relating to the execution of cross-decrees, is also important in this respect. It declares that the decrees contemplated by that section are decrees capable of execution at the same time and by the same Court. These expressions, in our opinion, seem to indicate a limitation in respect to the powers of execution by Courts of inferior jurisdiction. In respect to s. 223, we may also observe that the Court of the Munsiff, although inferior to the Court of a Subordinate Judge, is not, within the terms of s. 2, subordinate thereto. The definition of "District Court," as therein given, seems to contemplate that all Courts within a district are subordinate to the District Court, that is to say, the principal Civil Court of Original Jurisdiction, rather than to the Court of the Subordinate Judge, which is a Court generally having concurrent original jurisdiction with a District Court. We accordingly hold that s. 223, which declares that the Court which passes a decree may, on the application of the decree-holder, send it for execution to *another Court*, should be interpreted to mean another Court having jurisdiction and competent to execute that decree, having regard to the amount or value of the subject-matter of its ordinary jurisdiction. We have considered the case of *Narasayya* v. *Venkata Krishnayya* (2), but we are unable to concur in the opinion expressed by the learned Judges of the Madras Court. We have been referred to a case decided by another Division Bench of this Court (Pigot and Beverley, JJ.), on the 7th instant—*Gokul Kristo Chunder* v. *Akhil Chunder Chatterjee* (3)—in which the view taken of the decision of the Madras Court coincides with that we now express. The respondent is not without remedy in obtaining a set-off for the amount of his decree against the decree now under execution against him, provided he can satisfy any objections that may be raised as to a set-off being no longer allowable by reason of the assignment. He can, if so advised, apply to the District Court under s. 25 for the transfer of the decree

(1) I. L. R., 8 Calc., 51; L. R., 8 I. A., 123.

(2) I. L. R., 7 Mad., 397.

(3) *Ante* p. 457.

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under execution in the Court of the Munsiff to that for the Subordinate Judge, so that the Subordinate Judge may deal with both decrees together. The order of the lower Appellate Court is accordingly set aside, and the order of the Munsiff disallowing execution of this decree restored, but not on the grounds stated by the Munsiff, which are still open for consideration before a properly constituted Court.

J. V. W. *Appeal allowed.*

PRIVY COUNCIL.

P. C.* 1888 *November 16th.*

MAJID HOSSAIN AND OTHERS (PLAINTIFFS) *v.* FAZL-UN-NISSA (DEFENDANT).

[On appeal from the Court of the Judicial Commissioner of Oudh.]

Registration—Registration in accordance with the rules of 1862, *regulating the place and mode of it, in Oudh—Oudh Estates Act I of* 1869, *s.* 13.

An Oudh talukdarni made a grant of a village, part of her talukdari, to her adopted daughter; the instrument requiring, in order to be valid under Act I of 1869, s. 13, to be registered within one month after execution. With a view to its registration, she, being a purdanashin, sent for the neighbouring Pargana Registrar, who attended at her house for her convenience, took her acknowledgment of the document, recorded the registration, and filed a copy of the document in his office.

Held, that this proceeding was a registration of the document, complete and effective; having been, substantially, a registration at the Pargana office.

APPEAL from a decree (26th August 1885) affirming a decree (1st June 1885) of the District Judge of Lucknow.

The question was, whether a deed of gift required to be registered under Act I of 1869, s. 13, had been effectively registered.

The suit in which this question was raised was brought by Amir Haidar, talukdar of Gauria in the Lucknow District, to have set aside a deed of gift, of village Nizampur, executed, on 21st March 1871, by the late Mussammut Kutb-un-Nissa, his

* *Present:* LORD FITZGERALD, LORD HOBHOUSE, SIR R. COUCH, and MR. STEPHEN WOULFE FLANAGAN.